31 Sup. Ct. 502, and *United States* v. *American Tobacco Co.* (1910) 221 U. S. 106, 179, 31 Sup. Ct. 632, where "the rule of reason" was first enunciated, it was entirely unnecessary for the decision of the cases to say that only undue or unreasonable restraint of trade was covered by the statute, for under any theory the combinations were illegal. Such *dicta* may have served a purpose in clearing away apprehension that the courts would interpret the statute literally, as indicated by unfortunate *dicta* in some of the earlier cases, see *United States* v. *Trans-Missouri Freight Ass'n.* (1897) 166 U. S. 290, 312, 17 Sup. Ct. 540, but all the cases previous to the 1910 decisions, in the actual results reached, show that not every contract or combination in restraint of trade was illegal, but that there must have been an element of illegality about such contract or combination as measured by some standard not to be found in the act itself. See *Cincinnati etc. Packet Co.* v. *Bay* (1906) 200 U. S. 179, 26 Sup. Ct. 208; also 23 Harvard Law Rev. 353 for a review of the cases up to 1909. This means that the cases were all decided under "the rule of reason", the courts reaching their conclusions as to what was "reasonable" restraint of trade by the same process as that employed by the common law courts to reach their conclusions when questions of restraint of trade within their jurisdiction are presented. The purpose of the Sherman Anti-Trust Law, as shown by the debates in Congress at the time, was to enable the federal government to handle restraint-of-trade casees because there was no federal common law. See *Standard Oil Co.* v. *United States, supra,* 50. In the principal case, *prima facie,* there is a contract in restraint of trade, because a competitor is eliminated. But, on two theories, the decision can be supported that such restraint is not unreasonable: first, that the competitor will in any event cease doing business, so that buying him out is a merely nominal restraint; second, that any undue restraint which might be caused by the resulting monopoly is to be avoided by the supervision of the court under the injunction. Whether the machinery of the equity court is adequate for proper supervision, over prices if not over methods of maintaining such monopoly, without relying on aid from the Federal Trade Commission, as recently done in *United States* v. *Mead* (not yet reported) 18 Columbia Law Rev. 137, is another question.

MORTGAGES—MERGER—EFFECT OF PURCHASE OF EQUITY OF REDEMPTION BY A MORTGAGEE WHO ASSIGNED SECURED NOTES.—The plaintiff in a foreclosure action was an assignee of notes secured by realty held by the defendant, who had acquired successively the mortgage and the equity of redemption. Further relief in the nature of an order for a temporary injunction restraining waste was asked. The court rejected the defence of merger of legal and equitable interests, and though refusing to grant an injunction gave the plaintiff proper relief. *Stewart* v. *Munger & Bennet* (N. C. 1917) 93 S. E. 927.

When the equity of redemption and the legal estate of the mortgagee meet under the common ownership of the mortgagee, the ordinary result is a merger of the lesser interest into the greater. Jones, Mortgages (7th ed.) § 870; *cf. Pearson* v. *Bailey* (1902) 180 Mass. 229, 62 N. E. 265. But the courts view this operation of merger vigilantly, and have interfered so frequently to prevent it that the rule of merger has been declared to be determined by the intention of the party in whom the interests are united. See *First Nat'l. Bank* v. *Essex* (1882) 84 Ind. 144. This intention is discovered by the circumstances of the particular

case and the expressions of the mortgagee, *Aetna Life Ins. Co.* v. *Corn* (1878) 89 Ill. 170; *Townsend* v. *Provident Realty Co.* (1905) 110 App. Div. 226, 96 N. Y. Supp. 1091; see *Anglo-Calfornian Bank* v. *Field* (1905) 146 Cal. 644, 80 Pac. 1080, and in the absence of other evidence, will be presumed according to the best interests of the mortgagee. *Stantons* v. *Thompson* (1870) 49 N. H. 272. Courts of equity, however, will disregard the intention of the mortgagee when the effect of merger would work injustice and hardship on the mortgagor, *cf. Noble* v. *Graham* (1904) 140 Ala. 413, 37 So. 230, or third parties. *Campbell* v. *Knights* (1844) 24 Me. 332. This effect of outstanding equities on the question of merger is illustrated by the instant case, where the equity of the holder of notes to have the benefit of the securities held by his assignor prevented the merger of legal and equitable interests meeting in the mortgagee assignor. The result of the decisions seems to be that merger is not dependent on the intention of the parties but is determined by a consideration of the conflicting equities which may exist in any particular case.

PLEADING AND PRACTICE—JUDGMENT AT LAW ON COMPLAINT DEMANDING EQUITABLE RELIEF.—The plaintiff's complaint alleged a partnership agreement as to the proceeds of a joint enterprise and prayed an accounting. The proof disclosed merely an agreement to compensate the plaintiff for services rendered. *Held,* the court cannot give a judgment for damages but must dismiss the complaint. *Jackson* v. *Strong* (1917) 222 N. Y. 149, 118 N. E. 512.

The codes adopted in most states have abolished the distinction between actions at law and suits in equity and have substituted a single form of "civil action". N. Y. Code Civ. Proc. § 3339; Cal. Code Civ. Proc. § 307. This change, however, is one in procedure only, and the distinction between legal and equitable rights and remedies still exists. Baylies, Code Pleading and Practice (2nd ed.) § 3; Pomeroy, Code Remedies (4th ed.) §§ 8, 9. The result is that a plaintiff may obtain any relief, legal or equitable, warranted by the allegations in his complaint. Hence, if he mistakes his remedy, *e. g.,* by praying equitable relief on a complaint stating a legal cause of action, he may succeed nevertheless. *Sternberger* v. *McGovern* (1874) 56 N. Y. 12; *White* v. *Lyons* (1871) 42 Cal. 279; *contra, Horn* v. *Ludington* (1873) 32 Wis. 73. Where facts arising from the same transaction call for both legal and equitable remedies, the complaint may be framed with a "double aspect". See *Stevens* v. *Mayor* (1881) 84 N. Y. 296. Both remedies may thereby be obtained; *Hahl* v. *Sugo* (1901) 169 N. Y. 109, 62 N. E. 135; *Gray* v. *Dougherty* (1864) 25 Cal. 266; *contra, Supervisors* v. *Decker* (1872) 30 Wis. 624; or, if equitable relief is denied, legal relief may nevertheless be granted. *Herrington* v. *Robertson* (1877) 71 N. Y. 280. The above principles apply only where the defendant has interposed an answer; where judgment is given by default, it cannot be more favorable than that demanded in the prayer. N. Y. Code Civ. Proc. § 1207. In all of these cases, however, the allegations in the complaint fully sustained the remedy given. If the complaint is framed upon an equitable theory, which fails of proof, the authorities disagree as to whether judgment may nevertheless be had upon a legal cause of action disclosed by subsidiary allegations which are proved, the New York view being against such recovery. *Loeb* v. *Supreme Lodge* (1910) 198 N. Y. 180, 91 N. E. 547; *contra, Becker* v. *Superior Court* (1907) 151 Cal. 313, 90 Pac. 689; *see Jaeckel*